

DEPARTMENT OF PUBLIC HEALTH
AND HUMAN SERVICES

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Subchapter 1

Rule Making, Declaratory Rulings
and Petitions for Rule Changes

37.2.101 PROCEDURES FOR ADOPTING, AMENDING, AND REPEALING AGENCY RULES (1) The department of public health and human services, for purposes of establishing departmental rulemaking procedures, adopts and incorporates by reference attorney general's model procedural rules 1 through 7 found in ARM 1.3.102 through 1.3.210, except for the attorney general's sample rule notice forms. A copy of the attorney general's model rules may be obtained by contacting the Attorney General's Office, Justice Building, 215 N. Sanders, P.O. Box 201401, Helena, MT 59620-1401, telephone (406) 444-2026.

(2) The department utilizes its own rule notice forms which meet all Montana Administrative Procedure Act (MAPA) requirements. Samples of these forms can be obtained from the Department of Public Health and Human Services, Office of Legal Affairs, 111 N. Sanders, P.O. Box 4210, Helena MT 59604-4210, telephone (406) 444-5622. (History: Sec. 2-4-201, MCA; IMP, Sec. 2-4-201, MCA; AMD, Eff. 7/5/73; AMD, 1982 MAR p. 298, Eff. 2/12/82; TRANS, from SRS, 1996 MAR p. 2433; AMD, 2000 MAR p. 1653, Eff. 6/30/00; AMD, 2003 MAR p. 2440, Eff. 10/31/03.)

37.2.102 PROCEDURES FOR THE ISSUANCE OF DECLARATORY RULINGS (1) The department of public health and human services adopts and incorporates by reference attorney general's model procedural rules 22 through 24 and 28 found in ARM 1.3.227 through 1.3.229 and 1.3.233 which set forth the procedures for the issuance of declaratory rulings. A copy of the model rules may be obtained by contacting the Attorney General's Office, Justice Building, 215 N. Sanders, P.O. Box 201401, Helena, MT 59620-1401, telephone (406) 444-2026. (History: Sec. 2-4-202, MCA; IMP, Sec. 2-4-501, MCA; NEW, 1982 MAR p. 298, Eff. 2/12/82; TRANS, from SRS, 1996 MAR p. 2433; AMD, 2000 MAR p. 1653, Eff. 6/30/00; AMD, 2003 MAR p. 2440, Eff. 10/31/03.)

Subchapter 2 reserved

Subchapter 3

Recovery and Offset of Debts

37.2.301 PURPOSE AND SCOPE (1) Except as provided in (2), this subchapter implements for the department and the department of revenue the mechanisms provided in Title 17, chapter 4, MCA, for recovery and offset of monetary sums owing to the state of Montana related to the provision of services through the programs administrated by the department.

(2) The recovery and offset of debts being enforced or collected by the department under Title IV-D of the Social Security Act is implemented by ARM 37.62.1501, 37.62.1503 and 37.62.1505.

(3) The provisions of this subchapter are not the department's exclusive means of debt collection, but are in addition to any other means of offset, recovery or other debt collection procedures authorized by law. (History: Sec. 17-4-110 and 53-2-201, MCA; IMP, Sec. 17-4-104, 53-2-108 and 53-2-201, MCA; NEW, 1994 MAR p. 3198, Eff. 12/23/94; TRANS, from SRS, 1996 MAR p. 2433; AMD, 2000 MAR p. 1653, Eff. 6/30/00; AMD, 2003 MAR p. 2440, Eff. 10/31/03.)

37.2.302 DEFINITIONS (1) "Debt" means a monetary sum owed to the state of Montana including but not limited to sums owed arising out of overpayments received by recipients and providers of public assistance. Overpayments include payments made as the result of fraud, mistake or department error.

(2) "Department" means the department of public health and human services.

(3) "Offset" means a deduction from monies due to a person or entity from the state for the purpose of recovering in total or in part a debt owed by the person or entity to the state. An offset is undertaken by the department of revenue under the authority of 17-4-105, MCA in accordance with that agency's rules and policies. Offset may include but is not limited to an offset of a person or entity's state tax return.

(4) "Program" means any program of services or benefits for the public administered by the department including but not limited to:

- (a) aid for dependent families (AFDC);
- (b) medicaid;
- (c) food stamps;
- (d) AFDC and JOBS related daycare;
- (e) low income energy assistance program (LIEAP);
- (f) the former state general relief program;
- (g) rehabilitation services; and
- (h) visual services.

(5) "Recovery" means any measure undertaken by the state auditor's office under the authority of 17-4-101, MCA et seq. in accordance with that agency's rules and policies as a means of recovering a debt owed by a person or entity to the state of Montana. Recovery may include but is not limited to assignment to a collection agency and litigation. (History: Sec. 17-4-110 and 53-2-201, MCA; IMP, Sec. 17-4-104, 53-2-108 and 53-2-201, MCA; NEW, 1994 MAR p. 3198, Eff. 12/23/94; TRANS, from SRS, 1996 MAR p. 2433; AMD, 2000 MAR p. 1653, Eff. 6/30/00.)

Rules 03 and 04 reserved

37.2.305 REFERRAL FOR RECOVERY AND OFFSET (1) The department under the authority of 17-4-104, MCA may refer to the department of revenue for recovery and offset a debt owed to the department by a program recipient or by a provider of program services.

(2) The department may refer to the department of revenue any debt of a program recipient or a provider of program services including but not limited to those arising out of intentional or unintentional actions of the recipient or provider and those due to mistake upon the part of the department.

(3) The department must determine that a debt is uncollectable by the department before the debt may be referred to the department of revenue. (History: Sec. 17-4-110, MCA; IMP, Sec. 17-4-104, 53-2-108 and 53-2-201, MCA; NEW, 1994 MAR p. 3198, Eff. 12/23/94; TRANS, from SRS, 1996 MAR p. 2433; AMD, 2000 MAR p. 1653, Eff. 6/30/00.)

37.2.306 UNCOLLECTABLE DEBT (1) A debt is uncollectable by the department, if the department has determined that:

- (a) the debt is owing to the department;
- (b) the debtor has either not pursued available administrative due process within the department or has failed to prevail in the available administrative due process within the department or in any appeal from that administrative due process to the state or federal courts;
- (c) the debtor has failed to pay the debt after the department has made all reasonable efforts to collect the debt; and
- (d) the department has no administrative means such as recoupment from current payments to a recipient or provider by which to recover the debt.

(2) The department has made all reasonable efforts to collect a debt when the debt remains owed in whole or part after:

- (a) the department has utilized appropriate notices directed at the debtor's last known address to inform the debtor of the debt owed and the debtor cannot be contacted; or
- (b) the department has provided the debtor with an opportunity to enter into a repayment agreement based on a schedule for debt repayment that the department determines is appropriate and the debtor has failed to cooperate or the debtor is failing to repay the debt.

(3) A debtor is failing to repay a debt when the debtor has failed to make three monthly payments for which the department has provided notice of delinquency. (History: Sec. 17-4-110 and 53-2-201, MCA; IMP, Sec. 17-4-104, 53-2-108 and 53-2-201, MCA; NEW, 1994 MAR p. 3198, Eff. 12/23/94; TRANS, from SRS, 1996 MAR p. 2433.)

Subchapter 4 reserved

Subchapter 5

Self-sufficiency Trusts

37.2.501 SELF-SUFFICIENCY TRUSTS: PURPOSE (1) These rules provide for the acceptance by the state of monies from a certain type of trust, known as a self-sufficiency trust, to be used to purchase services to supplement the services that a person with a disability receives from the state. These rules also provide for the receipt of donated monies to be used for the purchase of certain human services.

(2) A properly constituted self-sufficiency trust allows a person to obtain additional resources for enhancing the quality of the person's life while maintaining the person's eligibility for certain state funded human services.

(3) These rules are not written to correspond to or to provide guidance concerning any requirements that may be necessary for a trust to be in compliance with state laws relating to trusts or the federal and state tax codes.

(4) The department is not responsible for advising or directing a party in the various legal requirements necessary for the establishment of a trust in relation to state trust law and federal and state tax codes. (History: Sec. 53-2-201 and 53-18-103, MCA; IMP, Sec. 53-18-101, 53-18-102, 53-18-103, 53-18-104 and 53-18-105, MCA; NEW, 1995 MAR p. 935, Eff. 5/26/95; TRANS, from SRS, 1996 MAR p. 2433.)

37.2.502 SELF-SUFFICIENCY TRUSTS: DEFINITIONS For the purposes of these rules, the following definitions apply:

(1) "Department" means the department of public health and human services provided for in Title 2, chapter 15, part 22, MCA.

(2) "Department funded services" means services and items normally purchased by the department for recipients of its programs. Department funded services are typically provided by a service provider through a contract with the department or by fee reimbursement from the department. The term also includes services provided by a service provider through a contract with the department of corrections or by free reimbursement from the department of corrections.

(3) "Beneficiary" means a person who is eligible to be a beneficiary of a self-sufficiency trust as provided in ARM 37.2.503.

(4) "Life care plan" means a written plan established to govern the provision of supplemental services purchased with the monies of a self-sufficiency trust.

(5) "Person with a disability" means a disabled person as defined at 45 USC 1382c(a)(3) (1995) who has a medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. 45 USC 1382c(a)(3) (1995) is a federal statute that is adopted and incorporated by this reference. A copy of the cited regulation is available upon request from the Department of Public Health and Human Services, Office of Legal Affairs, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210.

(6) "Self-sufficiency trust", as defined at 53-18-101(2), MCA, means a trust to benefit a person with a disability established, held and managed by a nonprofit corporation that is a 501(c)(3) organization under the United States Internal Revenue Code of 1954, as amended, and that is organized under the Montana Nonprofit Corporation Act, Title 35, chapter 2, MCA. The corporation must have as one of its principal purposes the use of trust monies for the care and treatment of a person or persons with disabilities who are or could be the recipients of department funded services. The monies of individual self-sufficiency trusts may be pooled together by a nonprofit corporation for management and investment purposes.

(7) "Self-sufficiency trust account" means the account established by the state for the purpose of receiving monies from self-sufficiency trusts for the purchase of supplemental services by the state for eligible beneficiaries.

(8) "Service provider" means a person or corporation that provides department funded services or supplemental services to a beneficiary.

(9) "Special charitable account" means the account within the state's self-sufficiency trust account established for the purpose of receiving charitable donations to fund services for persons who have developmental disabilities, mental illness and physical disabilities or who are otherwise eligible for department services, as defined by the department.

(10) "Supplemental services" means services and items that are in addition to the department funded services an eligible beneficiary is receiving from the department. (History: Sec. 53-2-201 and 53-18-103, MCA; IMP, Sec. 53-18-101, 53-18-102, 53-18-103, 53-18-104 and 53-18-105, MCA; NEW, 1995 MAR p. 935, Eff. 5/26/95; TRANS, from SRS, 1996 MAR p. 2433; AMD, 2003 MAR p. 2440, Eff. 10/31/03.)

37.2.503 SELF-SUFFICIENCY TRUSTS: ELIGIBLE BENEFICIARY

- (1) The beneficiary of a self-sufficiency trust must be:
- (a) a resident of the state of Montana;
 - (b) a person with a disability; and
 - (c) potentially eligible for services provided by the department or for mental health services provided by the department of corrections.
- (2) A person of 18 or more years of age has a disability only if the person is unable to engage in any substantial gainful activity due to the disability.
- (3) Services provided by the department include:
- (a) developmental disabilities services;
 - (b) vocational rehabilitation services;
 - (c) independent living services;
 - (d) severe disabilities services;
 - (e) weatherization services;
 - (f) low income energy assistance;
 - (g) aid for dependent children;
 - (h) food stamps; and
 - (i) medicaid services. (History: Sec. 53-2-201 and 53-18-103, MCA; IMP, Sec. 53-18-101, 53-18-102, 53-18-103, 53-18-104 and 53-18-105, MCA; NEW, 1995 MAR p. 935, Eff. 5/26/95; TRANS, from SRS, 1996 MAR p. 2433.)

Rule 04 reserved

37.2.505 SELF-SUFFICIENCY TRUSTS: QUALIFYING TRUSTS

- (1) To qualify as a self-sufficiency trust, an individual trust must meet the following criteria:
- (a) The individual trust must be established and managed by a nonprofit corporation which has as one of its principal purposes the use of trust monies for the care and treatment of a person or persons with disabilities who are or could be the recipients of state funded services;
 - (b) The individual trust must be for the sole benefit of a person or persons with disabilities who are or could be the recipients of the state funded services listed in ARM 37.2.503(3);

(c) The individual trust must be funded by the beneficiary, by a parent, grandparent or legal guardian of the beneficiary, or at the direction of a court;

(d) The individual trust must provide that the trust monies may only be expended on supplemental services;

(e) The individual trust must provide that upon the death of the beneficiary the state be reimbursed, to the extent the monies remaining in the trust allow, an amount equal to the total cost to the state of providing medicaid services to the beneficiary;

(f) The individual trust must provide that upon the death of the beneficiary, in accordance with IRS codes, rulings and interpretations, monies are donated from the remainder of the trust to the special charitable account as described in ARM 37.2.511;

(g) The expenditure of monies from the individual trust on behalf of a beneficiary must be governed by a life care plan approved by the department in accordance with ARM 37.2.508; and

(h) The individual trust must be established in accordance with state laws governing trusts and with relevant federal and state tax codes, rulings and interpretations. (History: Sec. 53-2-201 and 53-18-103, MCA; IMP, Sec. 53-18-101, 53-18-102, 53-18-103, 53-18-104 and 53-18-105, MCA; NEW, 1995 MAR p. 935, Eff. 5/26/95; TRANS, from SRS, 1996 MAR p. 2433.)

Rules 06 and 07 reserved

37.2.508 SELF-SUFFICIENCY TRUSTS: LIFE CARE PLAN APPROVAL AND PAYMENT (1) A life care plan must include:

- (a) the name and address of the beneficiary;
- (b) a description of the specific supplemental services to be purchased;
- (c) the amount of the supplemental services to be purchased;
- (d) the amount of money available to purchase the supplemental services; and
- (e) any other information necessary for the department to be able to decide whether it is feasible to purchase the specified supplemental services.

(2) A life care plan must meet the following criteria in order to be approved by the department:

(a) The supplemental services specified in the plan must be currently available and can be reasonably expected to be available for the beneficiary when necessary;

(b) The supplemental services specified in the life care plan can be purchased in a manner consistent with the practices of the department;

(c) The beneficiary's trust account must have sufficient monies over the term of the plan to fund the supplemental services to be purchased under the plan; and

(d) The services and items specified in the plan are supplemental services as defined in ARM 37.2.502.

(3) The department will notify the self-sufficiency trust corporation of the department's decision to approve or disapprove a life care plan.

(4) The self-sufficiency trust corporation must provide the department with a payment schedule by which the monies necessary for the reimbursement of the cost of the supplemental services specified in the plan will be deposited to the state's self-sufficiency trust account so as to provide payments for the purchase of the services.

(5) The department will not approve the life care plan for a person who is or could be eligible for state funded mental health services unless the department of corrections approves the plan and is committed to managing the delivery of the supplemental services specified in the plan. (History: Sec. 53-2-201 and 53-18-103, MCA; IMP, Sec. 53-18-101, 53-18-102, 53-18-103, 53-18-104 and 53-18-105, MCA; NEW, 1995 MAR p. 1135, Eff. 5/26/95; TRANS, from SRS, 1996 MAR p. 2433.)

37.2.509 SELF-SUFFICIENCY TRUSTS: LIFE CARE PLAN IMPLEMENTATION (1) The department manages the purchase and delivery of the supplemental services specified in an approved life care plan.

(2) The department may contract with a service provider to manage on behalf of the department the delivery of supplemental services specified in a life care plan.

(3) A contract for the management of the purchase and delivery of supplemental services specified in a life care plan must provide the following:

(a) the name and address of the beneficiary;

(b) the supplemental services to be purchased and delivered;

(c) the amount of money available in the life care plan to purchase the supplemental services;

(d) the types and quantity of the supplemental services to be delivered;

(e) the amount of any reasonable administrative cost the service provider may charge for the management of the purchase and delivery of the supplemental services; and

(f) any other information necessary to secure the purchase and delivery of supplemental services.

(4) Prior to the purchase of a service or item, the money to purchase the service or item must be available in the state's self-sufficiency trust account.

(5) The department reimburses the charges for supplemental services based upon billing provided after the delivery of the services.

(6) The department may terminate the delivery of supplemental services if the amount of funds deposited in the state's self-sufficiency trust account for that particular beneficiary is not sufficient for the management and purchase of the services specified in the life care plan.

(7) A life care plan may be modified only with the written approval of the department.

(8) A self-sufficiency trust desiring to terminate supplemental services must provide the department with written notification 30 days prior to the date when the services are to terminate. (History: Sec. 53-2-201 and 53-18-103, MCA; IMP, Sec. 53-18-101, 53-18-102, 53-18-103, 53-18-104 and 53-18-105, MCA; NEW, 1995 MAR p. 1135, Eff. 5/26/95; TRANS, from SRS, 1996 MAR p. 2433.)

Rule 10 reserved

37.2.511 SELF-SUFFICIENCY TRUSTS: SPECIAL CHARITABLE ACCOUNT (1) The special charitable account provides monies to fund services for recipients of the programs of services specified in ARM 37.2.503(3) on an individual or group basis.

(2) The special charitable account is funded with monies donated by individual trust accounts as provided in ARM 37.2.505 (1)(f) by other charitable donations, and by any other permissible means.

(3) The expenditure of monies from the special charitable account is subject to the legislative appropriation process.

(4) Services for a person are provided in accordance with the provisions of a life care plan developed by the department and approved by the special charitable account review board.

(5) The special charitable account review board is a 3 person board appointed by the department director to review and approve proposed life care plans developed by the department to purchase services for persons with funds from the special charitable account and to review and approve other expenditures from the account.

(6) The special charitable account review board consists of the following members:

- (a) a department employee;
- (b) a member of the board of directors of an organization which provides self-sufficiency trust services; and
- (c) an employee of a service provider. (History: Sec. 53-2-201 and 53-18-103, MCA; IMP, Sec. 53-18-101, 53-18-102, 53-18-103, 53-18-104 and 53-18-105, MCA; NEW, 1995 MAR p. 1135, Eff. 5/26/95; TRANS, from SRS, 1996 MAR p. 2433.)

37.2.512 SELF-SUFFICIENCY TRUSTS: REPORTING REQUIREMENTS

(1) A service provider, managing the purchase and delivery of supplemental services must provide an annual report to the department.

(2) The department must provide an annual report on an active individual self-sufficiency trust to the managing self-sufficiency trust corporation specifying the following:

- (a) the name and address of the eligible beneficiary who received supplemental services;
- (b) a description of the supplemental services provided;
- (c) the amount of the supplemental services provided;
- (d) the cost of the supplemental services provided; and
- (e) information about the impact of the supplemental services on the beneficiary. (History: Sec. 53-2-201 and 53-18-103, MCA; IMP, Sec. 53-18-101, 53-18-102, 53-18-103, 53-18-104 and 53-18-105, MCA; NEW, 1995 MAR p. 1135, Eff. 5/26/95; TRANS, from SRS, 1996 MAR p. 2433.)

37.2.513 SELF-SUFFICIENCY TRUSTS: STATE SELF-SUFFICIENCY TRUST ACCOUNT (1) Monies of a self-sufficiency trust, in order to be expended by the state, must be transferred to the department for deposit to the state self-sufficiency trust account.

(2) Monies from a self-sufficiency trust received by the department are deposited in the state's self-sufficiency trust account. The monies for each beneficiary are individually accounted for in the trust account.

(3) The department must return monies to a self-sufficiency trust along with any interest earned on the monies if the department is unable to obtain the supplemental services specified in the life care plan and the life care plan is not revised.

(4) The department must disburse monies from the special charitable account in the self-sufficiency trust account in accord with the appropriation process and the direction of the special charitable account review board. (History: Sec. 53-2-201 and 53-18-103, MCA; IMP, Sec. 53-18-101, 53-18-102, 53-18-103, 53-18-104 and 53-18-105, MCA; NEW, 1995 MAR p. 1135, Eff. 5/26/95; TRANS, from SRS, 1996 MAR p. 2433.)

Subchapter 6 reserved

Subchapter 7

State Facility Reimbursement

37.2.701 DEFINITIONS (1) "Department" means the department of public health and human services.

(2) "Discretionary income" is determined by subtracting fixed expenses from the total gross income or adjusted gross income from the most recent IRS tax return plus depreciation and voluntary retirement contributions which are deducted from the gross income on the tax return.

(3) "Financially responsible person" means a spouse of a resident, the natural or adoptive parents of a resident under 18 years of age or a guardian or conservator to the extent of the guardian's or conservator's responsibility for the financial affairs of the person who is a resident under applicable Montana law establishing the duties and limitations of guardianship or conservatorships.

(4) "Fixed expenses" means the amount determined by the department under ARM 37.2.703.

(5) "Income" means the amount determined by the department under ARM 37.2.702.

(6) "Liquid assets" means stocks, bonds, certificates of deposit, etc. which can be readily converted to cash.

(7) "Personal needs" means the reasonable cost of toiletries, newspapers, or other personal comfort items not normally supplied by an institution. The department will use the standards for medicaid guidelines as a minimum. The standards for medicaid guidelines are published in the Department Medical Assistance Guidelines Manual (see MA 904-1 and 904-3). A copy of these standards can be obtained from the Department of Public Health and Human Services, Fiscal Services Division, 111 N. Sanders, P.O. Box 6429, Helena, MT 59604-6429.

(8) "Real property" means land and permanent attachments including trees, buildings and infrastructure. (History: Sec. 53-1-403, MCA; IMP, Sec. 53-1-401, MCA; NEW, 1983 MAR p. 302, Eff. 4/15/83; AMD, 1984 MAR p. 1367, Eff. 9/14/84; TRANS & AMD, from DOC, 1999 MAR p. 1300, Eff. 6/18/99; AMD, 2003 MAR p. 2440, Eff. 10/31/03.)

37.2.702 INCOME (1) Income means economic benefit received by a resident or financially responsible person from any source, and includes, but is not limited to:

(a) gross wages, salaries, tips, commissions, bonuses and other earnings;

(b) draws or advances against future earnings;

(c) allowances, flat rate payments or per diem compensation for employment expenses;

(d) net receipts from nonfarm self-employment (receipts from a nonfarm business, profession or occupation, after deductions for reasonable operating expenses);

(e) net receipts from farm self-employment, whether an owner, tenant, or sharecropper (receipts from a farm or ranch, after deductions for reasonable operating expenses);

(f) net rental income (receipts from rental property after deductions for reasonable operating expenses);

(g) periodic payments from social security, unemployment compensation insurance, union strike funds, workers compensation, veterans benefits, public assistance (including, but not limited to, aid to families with dependent children or temporary assistance for needy families, supplemental security income and non-federally funded general assistance or general relief) and other government payments or benefits, disability benefits and training stipends;

(h) alimony, child support and military family allotments or other regular support from an absent family member or someone not living in the household;

(i) private pensions, government employee pensions (including military retirement pay), railroad retirement and regular insurance, trust or annuity payments;

(j) college or university scholarships, grants, fellowships and assistantships;

(k) dividends, interest or net royalties;

(l) distributions from estates or trusts, net gambling and lottery winnings; capital gains; proceeds from the sale of personal or real property (house, automobile, etc.); tax refunds, federal earned income credit, government subsidies or grants; gifts, one-time insurance payments, recoveries for injury or loss; and

(m) the value of non-cash benefits (including but not limited to in-kind compensation, personal use of a business vehicle, housing, food, utilities and payment of personal expenses or obligations). (History: Sec. 53-1-403, MCA; IMP, Sec. 53-1-405, MCA; NEW, 1999 MAR p. 1300, Eff. 6/18/99; AMD, 2003 MAR p. 2440, Eff. 10/31/03.)

37.2.703 FIXED EXPENSES (1) Fixed expenses shall be limited to reasonable and necessary living and mandatory expenses over which the resident or responsible person has little or no control, and which have been incurred or committed to prior to admission. These expenses may include, but are not limited to:

- (a) housing expenses such as:
 - (i) rent payment;
 - (ii) lease payment;
 - (iii) mortgage;
 - (iv) property taxes;
 - (v) property insurance;
 - (vi) mortgage insurance;
 - (vii) heat;
 - (viii) electricity;
 - (ix) water and sewer;
 - (x) waste disposal;
 - (xi) phone; and
 - (xii) special improvement districts (SIDs) and rural improvement districts (RIDs);
- (b) transportation expenses such as:
 - (i) vehicle payment;
 - (ii) vehicle lease;
 - (iii) vehicle insurance;
 - (iv) license;
 - (v) vehicle maintenance;
 - (vi) fuel; and
 - (vii) public transportation;

(c) medical expenses such as:
(i) actual medically related cost after subtracting insurance reimbursement; and
(ii) medical and nursing home insurance premiums;
(d) food expense;
(e) clothing;
(f) union dues;
(g) lodge dues which include life insurance;
(h) court ordered debt or payment (child support, alimony, etc.);
(i) taxes such as:
(i) federal;
(ii) state;
(iii) social security;
(j) mandatory retirement;
(k) voluntary retirement up to social security contribution;
(l) life insurance;
(m) burial contract committed to prior to or during the inpatient stay;
(n) child or adult day care;
(o) education; and
(p) employment expenses. (History: Sec. 53-1-403, MCA; IMP, Sec. 53-1-405, MCA; NEW, 1999 MAR p. 1300, Eff. 6/18/99; AMD, 2003 MAR p. 2440, Eff. 10/31/03.)

Rule 04 reserved

37.2.705 ABILITY TO PAY DETERMINATION (1) Upon receipt of sufficient financial information and documentation, the department may determine the fixed expenses of the resident or financially responsible person. The following shall apply to food, clothing and transportation expenses:

(a) allowances for food and clothing needs shall be based on data reported periodically by the USDA center for nutrition policy and promotion. A copy of the allowances for food and clothing are available upon request from the Department of Public Health and Human Services, Fiscal Services Division, 111 N. Sanders, P.O. Box 6429, Helena, MT 59604-6429; and

(b) transportation expenses shall be allowed for the actual cost of operating one vehicle per family, unless a second vehicle is essential to the production of income. If no vehicle is owned, the actual cost of public transportation shall be allowed.

(2) Ability to pay shall be determined by dividing the resident or financially responsible person's discretionary income as defined in ARM 37.2.701 by the number of persons dependent upon that income, including the resident or financially responsible person. The quotient shall be the resident's share of discretionary income or the ability to pay.

(3) The ability to pay shall be reduced by the monthly personal needs as defined in ARM 37.2.701 for the resident as determined by the department. If the department learns that the personal needs allowance is not being used for the resident's benefit, the department may discontinue the allowance.

(4) Liquid assets which exceed eligibility standards for medicaid shall be considered available to pay the cost of care unless protected as follows:

- (a) as protected by law;
- (b) an order of the court; or
- (c) the medicaid spousal impoverishment program.

(5) The department shall determine ability to pay based on the real property of a resident or the resident's spouse as follows:

(a) if the real property has been listed or advertised for sale, or is not occupied as the home of the resident, the resident's spouse, or a dependent child or parent of the resident or the resident's spouse, it shall be considered as provided in 53-1-405, MCA; or

(b) upon the sale of real property, the proceeds shall be considered available to pay the cost of care and shall be added to the ability to pay unless the property sale proceeds will be used to purchase a home within 18 months or are used for primary residence living expenses.

(6) The department shall review each determination of ability to pay as follows:

(a) annually, as provided in 53-1-408, MCA; or

(b) upon the request of a resident or financially responsible person providing documentation of a changed circumstance that would substantially affect the previous determination;

(c) the determination shall be effective upon completion of the review, unless the department finds one of the conditions in 53-1-408, MCA applies. Refunds of any overpayment resulting from an assessment retroactively reduced because of a new determination of ability to pay shall be made according to 53-1-405, MCA. (History: Sec. 53-1-403 and 53-1-405, MCA; IMP, Sec. 53-1-405, MCA; NEW, 1983 MAR p. 302, Eff. 4/15/83; AMD, 1984 MAR p. 1367, Eff. 9/14/84; TRANS & AMD, from DOC, 1999 MAR p. 1300, Eff. 6/18/99; AMD, 2003 MAR p. 2440, Eff. 10/31/03.)

37.2.706 PROCEDURE TO OBTAIN FINANCIAL INFORMATION FOR ABILITY TO PAY DETERMINATION (1) Upon admission or commitment to one of the institutions listed in 53-1-402, MCA, a representative of the department shall contact the resident or financially responsible person to obtain information and documentation for use in assessing the resident's or financially responsible person's ability to pay the resident's cost of care.

(2) The department shall allow the resident or financially responsible person 30 days from the date of the request or date of mailing to respond. If the resident or financially responsible person is contacted by mail, the department shall allow an additional three days for the response.

(3) If the resident or financially responsible person does not provide or cooperate with the department in obtaining the requested financial information and documentation within 30 days, the department may determine ability to pay, up to the full cost of care based on the information gathered by the department under 53-1-406, MCA. (History: Sec. 53-1-403, MCA; IMP, Sec. 53-1-406, MCA; NEW, 1983 MAR p. 302, Eff. 4/15/83; AMD, 1984 MAR p. 1367, Eff. 9/14/84; TRANS & AMD, from DOC, 1999 MAR p. 1300, Eff. 6/18/99; AMD, 2003 MAR p. 2440, Eff. 10/31/03.)

37.2.707 MONTHLY PAYMENT AMOUNT (1) The charge assessed against each resident or financially responsible person shall be the lower of:

(a) the full cost of care, as determined by recorded charges, less any payments received from other sources, except that payments received from a managed care organization administering a mental health managed care program under contract with the department shall not reduce the charge;

(b) the amount of the adjusted ability to pay determination; or

(c) the maximum parental liability, for parents of a long-term resident shall be based on data reported periodically by the United States department of agriculture (USDA) center for nutrition policy and promotion. The liability shall commence on the 121st day of care. The current maximum parental liability amount is available upon request from the Department of Public Health and Human Services, Fiscal Services Division, 111 N. Sanders, P.O. Box 6429, Helena, MT 59604-6429.

(2) The department may accept a monthly payment that is less than the assessed charges, with the balance accumulating as a liability of the resident or financially responsible person under the following circumstances:

(a) pending the sale of liquid assets or real property available to pay the cost of care;

(b) pending the anticipated receipt of income; or

(c) when a resident whose care treatment plans provide for discharge and economic independence within one year, and additional funds are needed for:

(i) savings to furnish and initiate an independent living arrangement for the resident upon release from the facility. Under this provision, funds shall not be conserved beyond the point that the resident would no longer meet the asset eligibility limits for SSI or medicaid; or

(ii) purchase of clothing and other reasonable personal expenses the client will need to enter an independent living arrangement. (History: Sec. 53-1-403, MCA; IMP, Sec. 53-1-405, MCA; NEW, 1983 MAR p. 302, Eff. 4/15/83; TRANS & AMD, from DOC, 1999 MAR p. 1300, Eff. 6/18/99; AMD, 2003 MAR p. 2440, Eff. 10/31/03.)

Rules 08 and 09 reserved

37.2.710 THIRD PARTY RESOURCES (1) Applicable medicare, medicaid, or personal insurance or similar health care benefits shall be considered as a resource of the resident.

(2) Upon verification of the receipt of third party payments made directly to a resident or financially responsible person, the department may enforce the automatic assignment of rights provided in 53-1-414, MCA. (History: Sec. 53-1-403 and 53-1-405, MCA; IMP, Sec. 53-1-405 and 53-1-414, MCA; NEW, 1983 MAR p. 302, Eff. 4/15/83; AMD, 1984 MAR p. 1367, Eff. 9/14/84; TRANS & AMD, from DOC, 1999 MAR p. 1300, Eff. 6/18/99.)

37.2.711 MAINTENANCE OF CHARGE RECORDS (1) The department shall maintain records of services provided to residents, and shall prepare a monthly itemized statement for each resident receiving chargeable services. Charges shall be recorded for each service and for each day the resident is at the institution at midnight. No per diem charge shall be recorded for the day the resident leaves, unless the resident dies or is admitted and discharged from the institution during the same day. (History: Sec. 53-1-403, MCA; IMP, Sec. 53-1-403 and 53-1-405, MCA; NEW, 1983 MAR p. 302, Eff. 4/15/83; TRANS & AMD, from DOC, 1999 MAR p. 1300, Eff. 6/18/99.)

37.2.712 PROCEDURE FOR FAILURE TO PAY (1) Accounts which are delinquent shall be identified by the department at 60, 90 and 120 day intervals. The department may notify a resident or financially responsible person whose account is delinquent 90 days of its intent to use the department of administration debt collection service for debt collection unless payment is received in 30 days.

(2) If no response or payment is received before the 120th day, the department may issue a second notice stating that action has been taken, and requesting that all correspondence and/or payment be directed to the department of administration.

(3) If a resident or financially responsible person dies owing a delinquent account, the department may notify the heirs, devisees, personal representative or attorney of its claim against any estate. (History: Sec. 53-1-403 and 53-1-404, MCA; IMP, Sec. 53-1-411, MCA; NEW, 1983 MAR p. 302, Eff. 4/15/83; AMD, 1984 MAR p. 1367, Eff. 9/14/84; TRANS & AMD, from DOC, 1999 MAR p. 1300, Eff. 6/18/99.)

37.2.713 REFUNDS AND RETROACTIVE ASSESSMENTS (1) If in the process of reviewing a resident's or responsible person's ability to pay, the department determines that information has been misrepresented on a previous financial statement, which if honestly represented would have resulted in a higher ability to pay determination, a retroactive adjustment of the monthly payment amount based on the increased ability to pay will be made.

(2) If a new determination results in a retroactive reduction of a prior monthly payment amount, and the account has been paid in full for that time period, a refund will be made.

(3) If combined payments from more than one payer are received which exceed the cost of care, a refund will be initiated with the appropriate party or intermediary listed as designated recipient. (History: Sec. 53-1-403, MCA; IMP, Sec. 53-1-408, MCA; NEW, 1983 MAR p. 302, Eff. 4/15/83; TRANS & AMD, from DOC, 1999 MAR p. 1300, Eff. 6/18/99.)

Rules 14 through 19 reserved

37.2.720 ABILITY TO PAY, ADMINISTRATIVE REVIEW AND FAIR HEARING (1) If the resident or a financially responsible person is aggrieved by the department's determination of ability to pay, that person may request an administrative review regarding the determination. The administrative review is subject to and shall be conducted in accordance with this rule.

(2) The request for administrative review must be:

(a) submitted to the department in writing;

(b) state the reasons the person contends that the determination is incorrect or fails to comply with legal requirements;

(c) include any additional information and substantiating documentation which the person wishes the department to consider in the administrative review;

(d) be received by the department within 30 days of mailing of the department's ability to pay determination letter; and

(e) be mailed or delivered to the Department of Public Health and Human Services, Fiscal Services Division, 111 N. Sanders, P.O. Box 6420, Helena, MT 59604-6420.

(3) A resident or financially responsible person aggrieved by an adverse department administrative review determination under this rule may request a fair hearing in accordance with ARM 37.5.304, 37.5.305, 37.5.307, 37.5.310, 37.5.311, 37.5.313, 37.5.316, 37.5.322, 37.5.325, 37.5.328, 37.5.331, 37.5.334 and 37.5.337. (History: Sec. 53-1-403, MCA; IMP, Sec. 53-1-407 and 53-1-408, MCA; NEW, 1983 MAR p. 302, Eff. 4/15/83; AMD, 1984 MAR p. 1367, Eff. 9/14/84; TRANS & AMD, from DOC, 1999 MAR p. 1300, Eff. 6/18/99; AMD, 2000 MAR p. 1653, Eff. 6/30/00; AMD, 2003 MAR p. 2440, Eff. 10/31/03.)

Subchapter 8 reserved

Subchapter 9

Community Services Block Grants

37.2.901 PURPOSE (1) The purpose of the community services block grant is to alleviate the causes of poverty within the state. (History: Sec. 53-2-201, MCA; IMP, HB 2 of the First Special Session, 1981; NEW, 1982 MAR p. 1272, Eff. 6/18/82; AMD, 1983 MAR p. 21, Eff. 1/14/83; TRANS, from SRS, 2000 MAR p. 745.)

37.2.902 DEFINITIONS For purposes of this subchapter, the following definitions apply:

(1) "Act" means the Omnibus Budget Reconciliation Act of 1981.

(2) "Contractor" means human resource development council, one of the state's 10 organizations designated as a community action agency under the provisions of section 210 of the Economic Opportunity Act of 1964 which is a nonprofit community organization serving low income persons in a multicounty area that has the same boundaries as one or more substate planning districts established by executive order of the governor.

(3) "County" means the board of county commissioners.

(4) "CSBG" means the community services block grant.

(5) "Department" means the department of public health and human services.

(6) "Director" means the director of the department of public health and human services.

(7) "Poverty line" means the official poverty line established by the director of the federal office of management and budget. (History: Sec. 53-2-201, MCA; IMP, HB 2 of the First Special Session, 1981 and Sec. 53-10-501, MCA; NEW, 1982 MAR p. 1222, Eff. 6/18/82; AMD, 1983 MAR p. 21, Eff. 1/14/83; AMD, 1983 MAR p. 754, Eff. 7/1/83; TRANS, from SRS, 2000 MAR p. 745; AMD, 2003 MAR p. 2440, Eff. 10/31/03.)

Rules 03 through 05 reserved

37.2.906 CONTRACTOR PLAN (1) To receive its allotment of CSBG funds, as determined under ARM 37.2.915, each contractor must submit, by October 1 of each year, its contractor plan to the department for review and approval. If the federal CSBG appropriation has not been determined to such a degree that estimates of allocations are feasible, the submittal date will be revised accordingly. (History: Sec. 53-2-201, MCA; IMP, HB 2 of the First Special Session, 1981 and Sec. 53-10-504, MCA; NEW, 1982 MAR p. 1222, Eff. 6/18/82; AMD, 1983 MAR p. 21, Eff. 1/14/83; AMD, 1983 MAR p. 754, Eff. 7/1/83; TRANS, from SRS, 2000 MAR p. 745.)

37.2.907 CONTRACTOR PLAN ASSURANCES AND CONTENT (1) A contractor must assure in its contractor plan that it will only use the funds:

(a) to provide a range of services and activities having a measurable and potentially major impact on causes of poverty in the community or those areas of the community where poverty is a particularly acute problem;

(b) to provide activities designed to assist low income participants including the elderly poor:

(i) to secure and retain meaningful employment;

(ii) to attain an adequate education;

(iii) to make better use of available income;

(iv) to obtain and maintain adequate housing and a suitable living environment;

(v) to obtain emergency assistance through loans or grants to meet immediate and urgent individual and family needs, including the need for health services, family needs, including the need for health services, nutritious food, housing and employment related assistance;

(vi) to remove obstacles and solve problems which block the achievement of self-sufficiency;

(vii) to achieve greater participation in the affairs of the community; and

(viii) to make more effective use of other programs related to the purpose of this subchapter.

(c) to provide on an emergency basis for the provision of such supplies and services, nutritious foodstuffs, and related services, as may be necessary to counteract conditions of starvation and malnutrition among the poor;

(d) to coordinate and establish linkages between governmental and other social services programs to assure the effective delivery of services to low income individuals;

(e) to encourage the use of entities in the private sector of the community in efforts to ameliorate poverty in the community; and

(f) to meet department-identified priorities which address one or more of the eligible activities described in (1)(a) through (e).

(2) Not all of items in (1)(b) through (f) must be proposed in a contractor plan. However, the contractor does have to certify that it is providing a range of services and activities having a measurable and potentially major impact on the causes of poverty in its community, commensurate with the amount of money received.

(3) The contractor plan shall contain the additional assurances that:

(a) CSBG funds will not be used to provide voters and prospective voters with transportation to the polls or provide similar assistance in connection with an election or any voter registration activity;

(b) CSBG funds will be used to provide for coordination between anti-poverty programs and, where appropriate, with emergency energy crisis intervention programs under Title XXVI of the Act (relating to low income home energy assistance) conducted in the county;

(c) fiscal control and fund accounting procedures will be established as may be necessary to assure the proper disbursal of and accounting for CSBG funds;

(d) the contractor will prepare and submit to the state, at least once every two years, an independent audit of the CSBG funds;

(e) amounts found not to have been expended in accordance with the Act or the contractor plan will be repaid to the state;

(f) no person shall on the ground of race, color, national origin or sex be excluded from participation in, be denied the benefits of or be subjected to discrimination under any program or activity funded, in whole or in part, with CSBG funds. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973 shall also apply to any such program or activity;

(g) CSBG funds will not be used for the purchase or improvement of land, or the purchase, construction or permanent improvement (other than low cost residential weatherization or other energy-related home repair) of any building or other facility;

(h) it will permit and cooperate with any federal or state investigation related to the CSBG; and

(i) each contractor must have a board of directors constituted so as to assure that:

(i) one-third of the members of the board are elected public officials currently holding office or their representatives, except that if the number of elected officials reasonably available and willing to serve is less than one-third of the membership of the board, membership on the board of appointive public officials may be counted in meeting such one-third requirements;

(ii) at least one-third of the members are persons chosen in accordance with democratic selection procedures adequate to assure that they are representative of the poor in the area served; and

(iii) the remainder of the members are officials or members of business, industry, labor, religious, welfare, education or other major groups and interests in the community.

(4) The contractor plan must contain:

(a) evidence that an assessment of needs has been undertaken to determine the best expenditures of CSBG funds;

(b) a description of which services and activities will be carried out and the means to be used to provide those services and activities. Such description shall also include the geographic areas to be served and categories or characteristics of individuals to be served. If direct services are planned, only individuals with income below the poverty line are eligible; and

(c) a proposed budget describing how the CSBG funds will be used during the program period.

(5) The program period will begin January 1 and end on December 31 of the same year. All contractor plans/budget material must be proposed for completion during that period. Should unusual or extraordinary circumstances occur, the department will consider requests for amendments to the contractor plan.

(6) The contractor plan shall be submitted on forms provided by the department. (History: Sec. 53-2-201, MCA; IMP, HB 2 of the First Special Session, 1981 and Sec. 53-10-504, MCA; NEW, 1982 MAR p. 1222, Eff. 6/18/82; AMD, 1983 MAR p. 21, Eff. 1/14/83; AMD, 1983 MAR p. 754, Eff. 7/1/83; TRANS, from SRS, 2000 MAR p. 745; AMD, 2003 MAR p. 2440, Eff. 10/31/03.)

37.2.908 CONTRACTOR PLAN APPROVAL, DISAPPROVAL, AMENDMENTS

(1) The contractor shall submit the plan to the county governing bodies within its multicounty area. A county governing body may approve, disapprove, or offer amendments to the plan. If the county governing body and the contractor cannot agree as to the plan's components, the department shall prepare and approve a plan for such county.

(2) The department will, within 45 working days of plan receipt, notify the contractor of approval/disapproval of each contractor plan.

(3) The department will base its review of the contractor plan on whether or not:

(a) the contractor plan demonstrates that it provides a range of services and activities having a measurable and potentially major impact on causes of poverty in the community, or those areas of the community where poverty is a particularly acute problem;

(b) all assurances and requirements of ARM 37.2.907 have been met.

(4) The department may disapprove a plan, in whole or in part, only if the plan conflicts with a state or federal law. If the contractor plan is either partially or totally unacceptable, the department will work with the contractor to develop an acceptable proposal. If an acceptable proposal can not be developed within thirty days after notice of disapproval, CSBG funds reserved for an affected county shall be distributed to contractors with approved contractor plans.

(5) If a contractor plan is disapproved, a contractor has the right to appeal to the director. The director's decision shall be the final administrative decision. (History: Sec. 53-2-201, MCA; IMP, HB 2 of the First Special Session, 1981 and Sec. 53-10-504, MCA; NEW, 1982 MAR p. 1222, Eff. 6/18/82; AMD, 1983 MAR p. 21, Eff. 1/14/83; AMD, 1983 MAR p. 754, Eff. 7/1/83; TRANS, from SRS, 2000 MAR p. 745.)

Rules 09 through 14 reserved

37.2.915 CONTRACTOR ALLOTMENTS (1) From the available CSBG funds, the department shall retain 5% for cost of administration of the grant and 5% for special projects.

(2) The balance of the block grant funds after any retention pursuant to (1) must be distributed to contractors that are eligible to receive such funding as follows:

(a) \$500,000, or if the balance of the block grant funds is less than \$500,000, then the entire balance of the block grant funds must be equally divided among the eligible contractors; and

(b) the balance of the block grant funds after distribution under (1) and (2)(a) must be divided among eligible contractors as follows:

(i) one-half based upon the percentage of the state's population residing within the contractor's area; and

(ii) one-half based upon the percentage of the state's population with income below the poverty line residing within the contractor's area.

(3) General population allocation: each contractor shall receive an amount equal to the population residing in the contractor's area according to the most recent U.S. decennial census divided by the population of the state of Montana according to the most recent U.S. decennial census times the amount available for allocation according to general population distribution in (2)(b)(i).

(4) Poverty population allocation: each eligible contractor shall receive an amount equal to the population residing in the contractor's area which has income below the poverty line according to the most recent U.S. decennial census divided by the population of the state of Montana which has income below the poverty line according to the most recent U.S. decennial census times the amount available for allocation according to poverty population distribution in (2)(b)(ii). If the results of the most recent U.S. decennial census are unavailable, the most current and accurate information available will be used. (History: Sec. 53-2-201, MCA; IMP, HB 2 of the First Special Session, 1981 and Sec. 53-10-502, MCA; NEW, 1982 MAR p. 1222, Eff. 6/18/82; AMD, 1983 MAR p. 21, Eff. 1/14/83; AMD, 1983 MAR p. 754, Eff. 7/1/83; AMD, 1994 MAR p. 1725, Eff. 6/24/94; TRANS, from SRS, 2000 MAR p. 745.)

37.2.916 RELEASE OF ALLOTMENTS (1) Release of allotments is contingent upon receipt by the department of the federal CSBG funds. As those funds are received, they will be disbursed by the department. (History: Sec. 53-2-201, MCA; IMP, HB 2 of the First Special Session, 1981; NEW, 1982 MAR p. 1222, Eff. 6/18/82; AMD, 1983 MAR p. 21, Eff. 1/14/83; TRANS, from SRS, 2000 MAR p. 745.)

Rules 17 through 19 reserved

37.2.920 REPORTS (1) Within 90 days of the end of the grant period or the completion of a contractor's planned activities, whichever comes first, the contractor will submit to the department certification that all assurances and services or activities contained in its approved plan have been complied with and achieved.

(2) Upon request, the contractor will submit to the department any reports, forms or documents deemed necessary in order to determine how the funds were expended and for which services or activities. (History: Sec. 53-2-201, MCA; IMP, HB 2 of the First Special Session, 1981; NEW, 1982 MAR p. 1222, Eff. 6/18/82; AMD, 1983 MAR p. 21, Eff. 1/14/83; TRANS, from SRS, 2000 MAR p. 745.)

Rules 21 through 24 reserved

37.2.925 TERMINATION OR REDUCTION OF ALLOTMENT (1) The allotment of a contractor who currently receives CSBG funding or who received funding in the previous program period can be terminated or reduced below the proportional share currently being received or received in the previous program period only for cause. The term "cause" includes but is not limited to:

- (a) a statewide redistribution of funds in response to:
- (i) the results of the most recent available census or other appropriate data;
- (ii) the establishment of a new entity eligible for funding; or
- (iii) severe economic dislocation; or
- (b) the contractor's failure to comply with the terms of its agreement to provide services.

(2) The allotment of a contractor who currently receives CSBG funding or who received funding in the previous program period can be terminated or reduced only after the contractor has been notified and given an opportunity for a hearing on the record before the director or the director's designee. A request for a hearing from a contractor must be submitted to the department in writing within 30 days of the date of notice of the termination or reduction. The decision of the director or the director's designee shall be subject to review by the secretary of health and human services.

(a) Upon request, the secretary shall review the record and issue a written determination stating the secretary's reasons for that determination.

(b) In cases where a contractor requests review by the secretary, the termination or reduction of the contractor's allotment is not final until the secretary has affirmed the state's finding of cause. (History: Sec. 53-2-201, MCA; IMP, Sec. 53-10-502, MCA; NEW, 1994 MAR p. 1725, Eff. 6/24/94; TRANS, from SRS, 2000 MAR p. 745.)

Chapters 3 and 4 reserved